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**IN THE
COURT OF APPEALS OF INDIANA**

BARBARA JOY GARCIA,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 45A04-0512-CR-723

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0311-MR-9

October 17, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Barbara Joy Garcia appeals from the sentence imposed by the trial court following her conviction for Murder, a felony.¹ In particular, Garcia argues that the trial court erred in imposing the presumptive sentence when it found two mitigators and no aggravators. Finding that the trial court properly concluded that imposing a reduced sentence would depreciate the seriousness of Garcia's crime, we affirm the judgment of the trial court.

FACTS

On October 30, 2003, Garcia and her husband, Cipriano Garcia (Cipriano), began arguing at their residence in Hobart. Cipriano eventually told Garcia that he was going to leave in the morning and remove her name from his bank accounts and that she would never receive another "dime" from him. Tr. p. 661. Garcia became afraid that, upon going to the bank, Cipriano would notice that she had withdrawn approximately \$4,000 to give to Tammy, Garcia's daughter and Cipriano's stepdaughter.

Garcia prepared a cup of coffee for Cipriano, dissolving Klonopin and Artane in the beverage to cause him to fall asleep. After he drank the coffee and fell asleep, Garcia retrieved insulin that she had previously taken from Tammy, who is diabetic, and injected Cipriano with a lethal amount of the drug. Garcia—a Licensed Practical Nurse—intended to inject enough insulin into Cipriano to kill him because she did not want him to go to the bank the next day.

¹ Ind. Code § 35-42-1-1.

Once Cipriano was dead, Garcia tried to move his body by using a rug. While Garcia was dragging the body, Tammy entered the house. Garcia told Tammy that Cipriano had died from a heart attack and that they needed to dispose of the body so that Garcia could still receive his retirement and social security checks. Tammy agreed to help, and the two women dragged the body into the garage. They were unable at that time to lift the body into the back of Garcia's truck, however, so they went inside and watched television. The following day was Halloween, and after Garcia and Tammy handed out candy to the children in the neighborhood, they again attempted—and again failed—to lift the body into the truck. The following night, they again failed in moving the body. The following day, after going to a party, Garcia and Tammy finally succeeded in moving the body into the truck by using a blue tarp, a board, electrical cords, and another vehicle.

Garcia drove Cipriano's body to a lake in Illinois, where she moved the body out of the truck and down the edge of a slope alongside the lake. Because it was beginning to rain and the slope was becoming slippery, Garcia left the body halfway down the slope covered in a rug, a blue tarp, and electrical cords and tied to cinder blocks. Subsequently, a passerby discovered the body and notified police.

On November 10, 2003, the State charged Garcia with murder. Garcia's jury trial was held beginning on September 26, 2005, and on October 4, 2005, the jury found her guilty as charged. On November 15, 2005, following a hearing, the trial court found no aggravating factors and two mitigating circumstances—Garcia's lack of a prior criminal history and the hardship she would suffer from incarceration because of her age. Finding that a reduction of

the presumptive sentence would depreciate the seriousness of Garcia's crime, the trial court imposed the presumptive sentence of fifty-five years. Garcia now appeals.

DISCUSSION AND DECISION

As we consider Garcia's argument that the trial court erred in imposing her sentence, we observe that sentencing determinations are within the sound discretion of the trial court, and we will only reverse for an abuse of discretion. Krumm v. State, 793 N.E.2d 1170, 1186 (Ind. Ct. App. 2003). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Id.

Garcia argues that because the trial court found two mitigators and no aggravators, it should have imposed a sentence totaling less than the presumptive² term. As noted above, however, the trial court concluded that imposing a reduced sentence would depreciate the seriousness of the crime. Although this finding may not support an enhanced sentence, it is proper to support the imposition of the presumptive term if the trial court is considering imposing a reduced sentence. Cotto v. State, 829 N.E.2d 520, 524 (Ind. 2005). Here, because the trial court found two mitigators and no aggravators, it is apparent that it was considering imposing a sentence of less than the presumptive term. The trial court was entitled to conclude that doing so would depreciate the seriousness of Garcia's crime, and we therefore conclude that the trial court did not abuse its discretion in imposing the presumptive sentence of fifty-five years.

² On April 25, 2005, the General Assembly amended Indiana's felony sentencing statutes, which now provide that the person convicted is to be sentenced to a term within a range of years, with an "advisory sentence" somewhere between the minimum and maximum terms. See Ind. Code §§ 35-50-2-3 to -7. Because the

The judgment of the trial court is affirmed.

VAIDIK, J. and CRONE, J., concur.

instant offense occurred in 2003, we will review Garcia's sentence under the former version of the relevant sentencing statute. See Ind. Code § 35-50-2-3.